

46 Am. Jur. 2d Judges § 66

American Jurisprudence, Second Edition | February 2022 Update

Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

VIII. Liabilities

A. Civil Liability

1. In General

§ 66. Actions against judge for injunctive or declaratory relief—Civil rights and *Bivens* actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  35, 36

Judicial immunity does not extend to civil rights actions under federal law,¹ seeking prospective injunctive relief against the judicial acts of state court judges.²

On the other hand, the abrogation of judicial immunity for suits seeking injunctive relief is inapplicable to *Bivens* actions,³ where federal judges enjoy the same immunity from equitable remedies as they do from damages for alleged constitutional torts committed during the exercise of their judicial functions.⁴ This distinction from the civil rights cases has been justified because:

- (1) while common-law concepts of judicial immunity permitted injunctive-type writs against inferior or rival courts and state judges are, as a matter of federal law, subject to the authority of federal courts on issues governed by federal constitutional or statutory law, a federal court judge may not enjoin the conduct of a member of a coequal or superior federal tribunal for reasons of policy and jurisdictional power;⁵
- (2) *Bivens* itself was concerned with money damages, not injunctive relief;⁶ and
- (3) while it is generally held that the common-law doctrine of judicial immunity cannot be extended in a manner which would thwart discernible congressional intent,⁷ a *Bivens* action is a judicially created remedy which lacks explicit congressional statutory permission for suits against federal officials.⁸

CUMULATIVE SUPPLEMENT

Cases:

Military judge presiding over, and prosecutors participating in, military commission prosecution of alien enemy combatant, in issuing subpoena and warrant of attachment to compel former active-duty officer's testimony before the commission, resulting in officer being forcefully taken from his home in Massachusetts to testify in Virginia by video, did not violate officer's clearly established rights, and thus, they were entitled to qualified immunity from liability on officer's *Bivens* claims against them; no court had accepted argument that Rules for Military Commissions authorizing military prosecutors to issue subpoenas and military judges to issue warrants of attachment for third-party witnesses were illegal, and defendants followed applicable regulations. *Gill v. United States*, 415 F. Supp. 3d 127 (D.D.C. 2019).

[END OF SUPPLEMENT]

© 2022 Thomson Reuters. 33-34B © 2022 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 42 U.S.C.A. § 1983.
- 2 *Pulliam v. Allen*, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984).
- 3 *Page v. Grady*, 788 F. Supp. 1207 (N.D. Ga. 1992).
The Fourth Amendment operates as a limitation upon the exercise of federal power regardless of whether the state in whose jurisdiction that power is exercised would prohibit or penalize the identical act if engaged in by a private citizen, and citizen who sustains damages as result of federal agents' violation of Fourth Amendment is not limited to action in tort, under state law, in state courts, to obtain money damages to redress the invasion of Fourth Amendment rights. *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971).
- 4 *Wightman v. Jones*, 809 F. Supp. 474 (N.D. Tex. 1992); *Stephens v. Herring*, 827 F. Supp. 359 (E.D. Va. 1993).
As to federal judges, generally, see Am. Jur. 2d, Federal Courts §§ 18 to 148.
- 5 *Page v. Grady*, 788 F. Supp. 1207 (N.D. Ga. 1992); *Stephens v. Herring*, 827 F. Supp. 359 (E.D. Va. 1993).
- 6 *Stephens v. Herring*, 827 F. Supp. 359 (E.D. Va. 1993).
- 7 *Pulliam v. Allen*, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984); *In re Perry*, 882 F.2d 534 (1st Cir. 1989).
- 8 *Page v. Grady*, 788 F. Supp. 1207 (N.D. Ga. 1992); *Wightman v. Jones*, 809 F. Supp. 474 (N.D. Tex. 1992); *Stephens v. Herring*, 827 F. Supp. 359 (E.D. Va. 1993).

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.